

PROPOSED SUBSTITUTE to HB 1956

H-2300.2 (2022) - By Representative Valdez

Current Version of Bill:

- Exempts from public disclosure sensitive records maintained by the Department of Corrections (DOC), which include:
 - records that would disclose the identity of a confidential informant;
 - body scanner images;
 - records that would disclose an incarcerated individual's disability or health information outside of that person's medical file;
 - records that would disclose information about an incarcerated individual's transgender, intersex, nonbinary, or gender nonconforming status; sexual orientation; genital anatomy; or gender-affirming care or accommodations other than that person's preferred name and pronouns; and
 - records that would disclose information related to an incarcerated individual's victimization risk assessment, risk identification, sexual abuse and harassment reports, or monitoring plan under the Prison Rape Elimination Act (PREA);
 - Exempts sensitive records from the requirement under the Public Records Act (PRA) to disclose an exempt record if the information that would violate personal privacy or vital governmental interests can be redacted.
 - Exempts the DOC, in situations where the DOC refuses the disclosure of certain sensitive records, from the requirement under the PRA that it provide a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record or information withheld, and instead authorizes the DOC to neither confirm nor deny the withholding of those records.
 - Requires that certain sensitive records relating to an incarcerated individual's disability or health information outside of that person's medical file or information about an incarcerated individual's gender nonconforming status, sexual orientation, genital anatomy, or gender-affirming care must be made available upon the written permission of the subject of the record being requested.
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Proposed Substitute Bill compared to Current Bill:

- Removes the category of "sensitive records" and narrows the list of exempt records maintained by the DOC to the following:
 - body scanner images;
 - records or information created or maintained pursuant to the PREA except for referrals to law enforcement or information contained in a violation or infraction record; and
 - health information in records other than an incarcerated individual's medical, mental health, or dental files.
- Defines "health information" as medical or mental health diagnoses, conditions, or PULHES codes; treatment or programming provided, overseen, or coordinated by a health care provider, including requests for or complaints about such treatment or programming; transgender, intersex, nonbinary, or gender nonconforming status; sexual orientation; genital anatomy; or gender-affirming care or accommodations other than an incarcerated individual's preferred name, pronouns, and gender marker.
- Removes the provided exemption from the requirement under the PRA to disclose an exempt record if the information that would violate personal privacy or vital

governmental interests can be redacted, thereby making this requirement applicable to the exempt records.

- Removes the provided exemption from the requirement to provide a brief explanation of how a PRA exemption applies to a record or information being withheld, and instead authorizes an agency that refuses the disclosure of exempt health information to identify the number of pages withheld and provide a citation to the statutory authority for the exemption without further explanation.
 - Requires that all records, not just certain records, exempt under the act be disclosed to the incarcerated individual who is the subject of the record or a requestor with the written permission of the subject of a record.
 - Adds an emergency clause.
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Committee: State Government & Tribal Relations Committee
Staff: Desiree Omli (786-7105)
Office of Program Research

BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: H-2300.2/22 2nd draft

ATTY/TYPIST: KS:lel

BRIEF DESCRIPTION: Exempting from public disclosure sensitive records pertaining to current and formerly incarcerated individuals' dignity and safety.

1 AN ACT Relating to exempting from public disclosure sensitive
2 records pertaining to current and formerly incarcerated individuals'
3 dignity and safety; adding a new section to chapter 42.56 RCW;
4 creating a new section; and declaring an emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 42.56
7 RCW to read as follows:

8 (1) The following information or records created or maintained by
9 the department of corrections is exempt from public inspection and
10 copying under this chapter:

11 (a) Body scanner images from any system designed to detect and
12 visualize contraband hidden in body cavities or beneath clothing,
13 including backscatter X-ray, millimeter wave, and transmission X-ray
14 systems;

15 (b) Records or information created or maintained pursuant to the
16 federal prison rape elimination act, 34 U.S.C. Sec. 30301 et seq.,
17 and its regulations, about an incarcerated individual other than
18 referrals to law enforcement or information contained in a violation
19 or infraction record; and

20 (c) Health information in records other than an incarcerated
21 individual's medical, mental health, or dental files.

1 (2) Information exempt under subsection (1) of this section must
2 be made available for inspection and copying to the incarcerated
3 individual who is the subject of the information, a requestor with
4 the written permission of the incarcerated individual who is the
5 subject of the information, or a personal representative of an
6 incarcerated individual who is the subject of the information. For
7 records disclosed pursuant to this subsection, the department of
8 corrections may withhold information revealing the identity of other
9 incarcerated individuals.

10 (3) An agency refusing, in whole or in part, inspection of a
11 public record containing information listed in subsection (1)(c) of
12 this section may identify the number of such pages withheld and cite
13 to subsection (1)(c) of this section without further explanation when
14 providing a brief explanation of how the exemption applies to the
15 record withheld.

16 (4) Jail records maintained by the department of corrections in
17 the course of operating a jail as described in RCW 70.48.100, and
18 department of corrections' records maintained by a jail as described
19 in RCW 70.48.100, are subject to RCW 70.48.100.

20 (5) For purposes of this section:

21 (a) "Health information" means any information that identifies or
22 can readily be associated with the identity of an incarcerated
23 individual and relates to the following: Medical or mental health
24 diagnoses, conditions, or PULHES codes; treatment or programming
25 provided, overseen, or coordinated by a health care provider,
26 including requests for or complaints about such treatment or
27 programming; transgender, intersex, nonbinary, or gender
28 nonconforming status; sexual orientation; genital anatomy; or gender-
29 affirming care or accommodations other than an incarcerated
30 individual's preferred name, pronouns, and gender marker.

31 (b) The following information is not "health information" under
32 this section: Health care information subject to RCW 42.56.360(2) and
33 chapter 70.02 RCW; whether an incarcerated individual participated
34 in, failed to participate in, was terminated from, or satisfactorily
35 completed court-ordered treatment or programming eligible for earned
36 release time as determined by the department of corrections pursuant
37 to RCW 9.94A.729; images or descriptions of an injury contained in a
38 violation or infraction record; or information related to the death,
39 irreversible coma, or persistent vegetative state of an incarcerated
40 individual.

1 (c) "Incarcerated individual" has the same meaning as "inmate"
2 under RCW 72.09.015 and includes currently or formerly incarcerated
3 individuals.

4 NEW SECTION. **Sec. 2.** This act is remedial, curative, and
5 retroactive, and the exemptions in section 1 of this act apply
6 retroactively to any public records request made prior to the
7 effective date of this section for which disclosure of records has
8 not already occurred.

9 NEW SECTION. **Sec. 3.** This act is necessary for the immediate
10 preservation of the public peace, health, or safety, or support of
11 the state government and its existing public institutions, and takes
12 effect immediately.

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